

ANDOVER BOARD OF HEALTH
Minutes
August 12, 2013, 6:00 P.M.
CD&P First Floor Conference Room
36 Bartlet Street

The Board of Health Meeting was called to order at 6:04 p.m. Present were Ms. Candace B. Martin, Chairman, Ms. Katherine Kellman, Vice-Chairman, Dr. Gopala K. Dwarakanath, Clerk, and Mr. Thomas G. Carbone, Director of Public Health.

I. Approval of Minutes

- **July 15, 2013**

Motion by Ms. Martin, seconded by Ms. Kellman to approve the Minutes of July 15, 2013. Unanimous approval.

II. Appointments & Hearings

- **6:00 p.m. – Strati Alepidis for Bruegger’s, 20 Main Street – Show Cause Hearing (Continued)** – Present were Mr. Strati Alepidis, General Manager, and Melvin Wong, District Manager of Bruegger’s. Mr. Carbone recapped that Bruegger’s was on the May Agenda and at that time the Board continued the Hearing for three months, taking no action. The Board wanted a staff inspection of the facility prior to tonight’s meeting. Mr. Carbone conducted an inspection on July 19, 2013 and found that there were no critical violations and that the conditions were vastly improved. In talking with the Manager, Mr. Carbone learned that they have upgraded some of the equipment and both the new Assistant Manager and the new Manager have been coming in to help. Ms. Martin asked what things have changed besides the physical improvements. Mr. Alepidis stated that they actually did a lot of physical improvements, such as replacing tiles and flooring. The most critical is allocating the time and labor to set new perimeters and agendas of how to go about cleaning the restaurant. They have brought in EcoSure, a company that does health inspections once a quarter, and have changed the culture of the restaurant. Mr. Wong stated that EcoSure is another set of eyes that can see problems the owners many not see. Dr. Dwarakanath asked what is the biggest change of the culture. Mr. Alepidis stated that the employees do as they are told and follow the procedures. They have hired new workers and are making sure new employees are trained correctly from the beginning. They also hired another salaried Manager, so there is always a Manager on duty. Ms. Martin stated that she was pleased that they took the initiative and invested in both equipment and staff.

Motion by Ms. Martin, seconded by Ms. Kellman, to close the Show Cause Hearing taking no further action. Unanimous approval.

- **6:10 p.m. – Xiaolin Hou and Yan Lin for 26 Orchard Crossing – Order of Condemnation** – Mr. Carbone informed the Board that the work has been completed and the house is now connected to sewer.

Motion by Ms. Martin, seconded by Dr. Dwarakanath to close the Order of Condemnation Hearing, taking no further action. Unanimous approval.

6:11 p.m. – Jeffrey Wise for Pizza Connection – Show Cause Hearing to Revoke Food Permit – Mr. Jeffrey Wise was present. Mr. Carbone informed the Board that Mr. Wise had problems during Plan Review before the restaurant opened. The Health Division has had two legitimate complaints before the restaurant was even open a year. On April 29, 2013 a person became ill, and an inspection revealed three critical violations including cross contamination in the food storage area, lack of sanitizer, and leaking plumbing wastelines as well as general cleanliness issues. Mr. Carbone then held an Administrative Hearing to try to keep things from spiraling down. On August 1, 2013, another complaint was received concerning bad meat in a sandwich. Health Inspector, Patricia A. Crafts, found spoiled meat in containers that had not been thrown away after the customer told the store about the rancid meat. At this time five critical violations were found: spoiled food, improper employee sanitation, stagnant water in the deli unit, improper storage of food and the Person in Charge (PIC) was not knowledgeable of standards. The following day Ms. Crafts went back and found no improvement as well as more critical violations. Mr. Carbone then had Ms. Crafts order the restaurant to close for cleaning. A re-inspection was done on August 5, 2013 and the restaurant was allowed to reopen.

Ms. Martin asked who is present and in charge on a daily basis. Mr. Wise replied that there are three principle owners: Mr. Wise, Ryan O'Leary and Joe O'Leary, who are all there on a part-time basis. Charles Silva is the PIC and they also have another PIC who is a Shift Runner, Colin Reddington. Mr. Silva is at the restaurant 50 hours a week, five days a week. Typically there is an owner there as well, and between the three of them, someone is there five days a week. Mr. Reddington works four to five days a week as well and is in charge when Mr. Silva is not there for some of the shifts. Mr. Silva is ServeSafe Certified and Mr. Reddington took the test after Ms. Crafts' inspection. Ms. Martin asked if one of them is always at the restaurant, or if someone else is getting ServeSafe certified. Mr. Wise replied that Mr. O'Leary is the only one who is not certified and does not run shifts on his own. Ms. Martin stated that when violations were pointed out by Ms. Crafts, they were not corrected the next day and wanted to know what happened. She was very surprised at the lack of response and wondered if there was some misunderstanding. When sandwiches are returned and there is no further investigation of the rest of the meat to see if any more of it is rancid, that shows lack of knowledge. Dr. Dwarakanath stated it is the responsibility of the staff member to take care of that issue by looking at that box of meat to see if any more meat is bad. Mr. Carbone informed the Board that Mr. Wise was on vacation during that inspection so was unable to assist in the investigation.

Mr. Wise stated that Mr. Reddington also did not clean properly and that is why he is now ServeSafe Certified. They now have put a package together of procedures to follow. Now everything that comes in is dated in writing when it comes in, when it is prepped, and the expiration date of the product. Also as part of the daily cleaning checklist, the dates must be checked then the sheet is signed off by one of the Managers. Dr. Dwarakanath was concerned because during the first year a restaurant is open, the staff is usually very diligent. However, the Pizza Connection has had problems from the very beginning, and that is cause for worry. The management should be more vigilant as time goes on, especially in a time that social media can spread the message that someone got sick at the restaurant. Mr. Wise agreed and takes full responsibility, even though he believed the problem was the lack of the competency of the Store Manager.

Dr. Dwarakanath stated that the Board wants Mr. Wise to succeed, and that he should look at it as safeguarding the health of the people who eat there. Mrs. Martin stated that she wanted to know what specifically Mr. Wise will change. Dr. Dwarakanath asked how Mr. Wise will make sure his Staff is cogniscent of what the issues are and how to proceed from here. Mr. Wise stated that he understands why he is here and what has to be done to correct the issues. He stated that now that they have the checklists in place they will make sure the checklists are followed. He will not allow any non-food personnel into the cook area again, either. Ms. Martin stated that there seems to be a lack of understanding on how to run a restaurant. Owners need to know how to follow simple sanitation and cleaning procedures. Ms. Kellman stated that words are fine, but Staff should understand what sanitizer means, and that it seems there is a lack of judgment on the part of the Managers. The Board needs to be convinced that the checklists will be done properly, and Ms. Martin pointed out that part of the checklist shown to them from Mr. Wise was not filled out for today's date. Mr. Wise stated that he just noticed also and will check into why it was not filled out. Ms. Martin expressed concern because the checklist couldn't even be followed for a week. Mr. Wise stated that this all comes down to education for the Staff.

Ms. Martin stated that the restaurant has only been open ten months, and during that time there has been an Administrative Hearing, poor inspections with multiple critical violations, illness and closure. Mr. Wise should not need an Inspector to tell him the restaurant is dirty; he should be able to see that for himself. Mr. Wise stated that he is willing to get outside parties in for training and inspections. The Board was very concerned because these issues show lack of management and ownership and the investment Mr. Wise made should have made him heed the warnings and take action immediately. Mr. Wise stated that he knows he and his partners have a lot of money invested and understands how important this is. He intends to sell the restaurant and would like to keep it open with proper standards before it is sold. Ms. Martin stated that this comes down to having an investment and the restaurant needs to be kept clean in order to keep the resale value of the restaurant intact.

Ms. Martin explained that in the past the Board has had restaurants hire an outside contractor to help with training and watching staff to make sure procedures are being

followed properly. Mr. Carbone stated that he never had a restaurant in this condition this early in its life. There are options available to the Board and range from revoking the Food Establishment License, continuing the Hearing for one to two months with Health Staff inspections, hiring an outside contractor for three months with an inspection each month, or doing nothing. Mr. Carbone explained that the inspections would be unannounced and if the Board wants Mr. Wise to utilize an outside contractor, that person would observe their operations, make sure things are done correctly and educate Staff when problems are found. Ms. Martin stated that she would like to see an outside consultant at the restaurant within one week, surprise inspections in August and September by the consultant, as well as an inspection by Mr. Carbone and would be willing to continue the Hearing for two months. Ms. Martin also wants to see better coverage of the Staff by Management reinforcing the checklists because that responsibility needs a watchful eye. Ms. Kellman asked what the process would be if there is another significant issue within that time and Ms. Martin responded that the restaurant would then be closed. Mr. Carbone stated that nothing precludes the Board of Health from holding an emergency meeting. Also, through the Board's delegation, it has already delegated Health Staff the authority to take action to close the restaurant if needed. Ms. Kellman made sure that Mr. Wise knew that the Board was not giving him two months to take care of these issues; the Board wants things to be better immediately.

Motion by Ms. Martin, seconded by Ms. Kellman, to continue the Show Cause Hearing for two months, with the requirements that they hire a Private Inspection service; that there be an inspection in August and September; that the Private Inspector be hired within a week to include training; that the owners do a daily surveillance; and that the Health Division do an inspection before the Board of Health Meeting in October, and if there are any critical violations during that time, an immediate emergency Hearing will be required to discuss the continued operation of the restaurant.

Motion by Ms. Martin to amend the previous motion to include the requirement that the Private Inspector Reports be submitted to the Health Division. Ms. Martin, Aye; Ms. Kellman, Aye; Dr. Dwarakanath, Aye. Unanimous approval.

Ms. Martin asked if all were in favor of the original motion: Ms. Martin, Aye; Ms. Kellman, Aye; Dr. Dwarakanath, Aye. Unanimous approval.

III. Discussion

- **Methuen Health Department Cuts** – Mr. Carbone stated that at the July 15, 2013 Board of Health Meeting, he filled in the Board Members about the surprise removal of the Director of Public Health in Methuen. The job has not been refilled and Mr. LaGrasse is no longer the Director. The Director of Community Development in Methuen, Bill Buckley, said the nurse's hours may be restored, but was not sure of that. Mr. Buckley attended the Emergency Preparedness Coalition Meeting last week and stated that someone from his staff will still participate in the meetings. Mr. Carbone's concerns with the cuts were that Methuen had been really helpful and

active with helping with the group regionally, and we depended on Mr. LaGrasse to help us keep up with the Preparedness work. Mr. Carbone stated that there have been discussions between Haverhill and Methuen on what they could be doing regionally, and there has been some outreach to other communities, but Mr. Carbone was not clear where that would lead.

- **Mosquito Pools tested Positive in Tewksbury at the Andover Line (not on Agenda)** – Mr. Carbone informed the Board that mosquito pools in Tewksbury tested positive for West Nile Virus. Mr. Carbone has been in contact with Jack Card from Mosquito Control and he suggested that he could arrange to have the area bounded by Lowell St., Rte 93, and the Town line sprayed. Mr. Carbone provided the Board with a map of the area that would be sprayed.¹ The triangle shown on the map will be the spray area; the inner circle is a ½ mile radius, and the outer circle is a one mile inner radius from where pool was found. Mr. Carbone would recommend spraying from the town line along Rte.133 out to the Raytheon entrance, then come back to Brown Street, Bellevue Rd. and Blanchard Street. Ms. Martin asked if Mr. Carbone would include the baseball fields in the area and he replied that they are not in use at this time so they would be included. Ms. Martin stated that she would like to be prepared to spray all the athletic fields before school starts. Mr. Carbone stated that it was worth a discussion if the Board would want to authorize him to have that with the School Department. If we are going to do barrier spraying of the athletic fields, it should be done before school sports start. Ms. Martin would like Mr. Carbone to get that spraying on the list because in the past the weather stopped us from doing the spraying.

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to authorize the spraying of the area on the map as well as the barrier spraying of the athletic fields. Unanimous approval.

Ms. Martin asked if Mr. Carbone thought the Board should make another motion to authorize him to do more spraying if needed. Mr. Carbone stated that last year the spraying was done so early, and the motion made by the Board last year was to authorize a small workgroup to make that determination instead of coming back to the Board. Ms. Martin, Mr. Carbone, and Mr. Stapczynski, Town Manager, were authorized to make that decision. If there is a desire next year to amend the Response Plan, and take that into account, that can be done.

Motion by Ms. Martin, seconded by Ms. Kellman to convene a smaller Task Force to decide on additional spraying and the Task Force as defined in our Regulations would include Ms. Martin, Mr. Carbone and the Town Manager, Mr. Stapczynski. Unanimous approval.

- **Use of Drop Box for Agenda Items (not on Agenda)** – Dr. Dwarakanath informed the Board that he was not able to open the link. Mr. Carbone stated the file may have been too large, so next month we will experiment with breaking the Agenda packet into smaller pieces. We can do multiple documents; one for minutes, one for Appointments, one for monthly reports, etc. Also, we can make plans into a pdf file

¹ A copy of the map has been added to the Agenda Packet after page 20.

for easier access and viewing. Ms. Kellman suggested that if Mr. Carbone has these as word documents he can save them as pdf files. A pdf document can be searched where you cannot search a scanned document. Mr. Carbone stated that we have the capability to save files as pdf and uses that when e-mailing letters so that no changes can be made to them. We will keep experimenting with this until we find the best way to do this.

- **Public Health Preparedness Quick Series Booklet (not on Agenda) -**

IV. Old Business

- **116 Osgood Street Update** – Mr. Carbone explained that he was in Court on Thursday. There has been some slight progress with the cleanup. Ms. Odle has been working in the back of the property. They will appear in court again in two weeks. Ms. Odle did appear in Court on Thursday and had an attorney with her.
- **27 Kirkland Driver Update** – Mr. Carbone explained to the Board that Mr. Santangelo, son of the deceased Salvator Santangelo, has an attorney, but as of last week he hasn't cleaned up as ordered. Mr. Carbone will make one more visit and then will file an application at the Housing Court. Ms. Martin stated that she was concerned not only with the trash issue, but with the condition of the steps. She was worried about Mrs. Santangelo getting in and out of the house because of the impeded egress. Mr. Carbone stated that in the past there has been concern with the physical condition of the porch, but that is not the issue any more. There is a lot of clutter that does impede the ingress and egress, so that needs to be addressed. In his letter, Mr. Carbone cited both housing code violations and public health nuisance laws. Ms. Martin asked if Ms. Santangelo was receiving proper care. Mr. Carbone has not been able to get into the house, but he knows that there have been public services there. Dr. Dwarakanath stated that he walks past there and sees stagnant water, and was concerned that mosquitoes can breed there when all Mr. Santangelo has to do is empty the water out of the containers. Mr. Carbone explained that there was a time when it wasn't an issue, but it is back to being an issue again. Dr. Dwarakanath asked if going to Housing Court would help. Mr. Carbone replied that we file in criminal court, but there are options such as having the ability to ask for a Receiver to go in and take care of the property; there are different things that can happen. Our test case for the Receivership was at the Osgood Street property and the Attorney General's office helped with that.
- **2 Dufton Road Update** – Mr. Carbone stated that he stopped by the property and talked to the owner. As awful as the yard looks, the only real problem was just the amount of materials that were in the doorways, so Mr. Carbone told the homeowner to pull those materials out of the way. That is still actively working its way through Bankruptcy Court so the bank can take it over. Mr. Carbone and Chris Clemente, Town of Andover Building Inspector, spoke with Town Counsel to see if there was anything else we should be doing, and the feeling after that meeting was that with

bankruptcy things get stalled, and there is not a lot that can be done. Mr. Carbone felt that the bank that has foreclosed will most likely prevail.

V. Definitive Subdivision Plans

- N/A

VI. Plan Review

- **DWRP – Variances/Local Upgrade Approval**
 - **384 Lowell St – LUA to allow SAS to be 4' to water table, where 5' is required & SAS to be 12' to Foundation, where 20' is Required** – Mr. Carbone explained that this property is on the corner of Tessier Drive and the lots are not very big, so will need some sort of setback variance no matter the location of the system. Bill Dufresne of Merrimack Engineering found the best location for the septic. As far as the groundwater, it appears that when it was built 4' above the water table was what it was. He has proposed to maximize it so it will be no more than a 1' variance; it will probably be closer to ½' variance which will avoid the installation of a pump. Ms. Kellman asked if the only reason for the LUA was so that the homeowner would not need to install a pump. Mr. Carbone explained that we prefer gravity because it never breaks down and if the power goes out, the septic system can still function. Up until 1995, there was always a 4' setback, then they did a thorough review, and the science was leading to the idea that with a very fast perc rate, water goes too quickly through the sand and doesn't get completely cleaned, so adding that extra 1' was needed. In an existing house like this, he doesn't see the groundwater benefit exceeding the cost for the pump. In this case we are close. Mr. Dufresne gave us a justification per Mr. Carbone's request, and that is included in the packet.

Ms. Martin expressed her concern about wanting to have sewer installed in that area. Mr. Carbone explained that one of the things DWP will be looking at for the CIP next year is a review of the Master Sewer Plan. Mr. Carbone was at a meeting last week at DPW and Chris Cronin, Highway Department Superintendent, mentioned that they would be doing a review of the Master Sewer Plan. They would be reprioritizing and looking to see where there are capacity issues. We are fully expecting a change in the State Regulations over the next six months and would expect that by doing the Master Plan Review we will be setting ourselves up for better compliance.

Motion by Ms. Martin, seconded by Ms. Kellman, to approve the LUA to allow the SAS to be 4' to the water table, where 5' is required & the SAS to be 12' to Foundation, where 20' is Required. Unanimous approval.

- **100 Red Spring Road – LUA to allow Tank to be 7' to the Property Line & 6' to the Foundation, where 10' is Required; allow SAS to be 6' to the Property**

Line, where 10' is Required; allow SAS to be 17' to the Foundation, where 20' is Required – Mr. Carbone stated that this property failed a Title V Inspection and the homeowner was required to connect to sewer. When cleaning out some of our records, we looked to see if the property ever connected to sewer. The homeowner needed to get an easement from a neighbor in order to connect to sewer, but the neighbor wanted him to pay more than what he could afford. Mr. Carbone told the homeowner to get in contact with the Conservation Commission to ask it to grant an easement on the Conservation land next to the property. That request was denied, so the homeowner has no choice except to put in a new septic system. The 10' setback is generally needed so that construction work can be done on the property, but since the lot is small the 6' setback should work.

Motion by Ms. Martin, seconded by Ms. Kellman, to approve the LUA to allow Tank to be 7' to the Property Line & 6' to the Foundation, where 10' is Required; allow SAS to be 6' to the Property Line, where 10' is Required; allow SAS to be 17' to the Foundation, where 20' is Required

VII. Staff Reports

A. Director's Reports:

- **Important Dates:**

- August 22, 2013, at 9:30 a.m. – Employee Blood Borne Pathogen Training
- September 16, 2013 at 6 p.m. – Board of Health Meeting
- October 21, 2013 at 6 p.m. – Board of Health Meeting

B. Nurses' Reports for July, 2013 – The Nurses' Reports for July, 2013, were for informational purposes only.

C. Inspectors' Reports for July, 2013 – The Inspectors' Reports for July, 2013 were for informational purposes only.

VIII. Board Member Reports

- N/A

IX. Adjournment

Motion by Ms. Martin, seconded by Ms. Kellman, to adjourn at 7:20 p.m. Unanimous approval.